

JAN 26 2006  
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**Fax Transmission** | January 26, 2006

TO: Commissioner for Patents  
Attn: Petitions Branch; Mail Stop Patent Term Extension  
P.O. Box 1450  
Alexandria, VA 22313-1450

FROM: Katherine M. Kowalchyk

OUR REF: 11669.183USU1  
TELEPHONE: 612.371.5311

Total pages, including cover letter: 18

PTO FAX NUMBER 1-571.273.8300

If you do NOT receive all of the pages, please telephone us at 612.371.5204, or fax us at 612.332.9081.

Title of Document Transmitted: REQUEST FOR PATENT TERM ADJUSTMENT  
UNDER 37 C.F.R. § 1.705(d) AND EXHIBIT A

Applicant: SIMMONS ET AL.  
Serial No.: 10/020,786  
Filed: DECEMBER 13, 2001  
Group Art Unit: 1636  
Our Ref. No.: 11669.183USU1  
Confirmation No. 9525  
Patent No. 6,979,556

PLEASE CHARGE OUR DEPOSIT ACCOUNT NO. 13-2725 IN THE AMOUNT OF \$200.00 FOR THE PETITION FEE. Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725. Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers, if appropriate.

By: Kath M Kowalchyk  
Name: Katherine M. Kowalchyk  
Reg. No.: 36,848

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Kath M Kowalchyk  
Signature

January 26, 2006  
Date

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PATENT

S/N 10/020,786

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	SIMMONS ET AL.	Examiner:	G. LEFFERS
Serial No.:	10/020,786	Group Art Unit:	1636
Filed:	DECEMBER 13, 2001	Docket No.:	11669.183USU1
Confirmation No.	9525	Customer No.	23552
Title:	PROKARYOTICALLY PRODUCED ANTIBODIES AND USES THEREOF		

**CERTIFICATE UNDER 37 CFR 1.6(d):**

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on January 26, 2006.

By: 

Name: Katherine M Kowalchuk

**REQUEST FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)**

Mail Stop Patent Ext  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants hereby request reconsideration of the patent term adjustment indicated on the face of patent, U.S. Pat. No. 6,979,556 that issued on December 27, 2005, from the above-identified application. Please charge our Deposit Account No. 13-2725 in the amount of \$200.00 as set forth in 37 C.F.R. § 1.18(e) for the petition fee. This request for reconsideration is timely in accordance with 37 CFR 1.705(d), being filed within 2 months of the date of issuance.

**Statement of the Facts**

1. The face of the issued patent indicates a patent term adjustment of 157 days.

Applicants respectfully submit that a patent term adjustment of 221 days is indicated by the Rules.

2. 37 C.F.R. § 1.704(d) states that a paper containing only an information disclosure statement in compliance with 37 C.F.R. § 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution of the application under 37 C.F.R. §

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1.704c(8), if the IDS shows that each item of information contained in the statement was first cited in a communication from a foreign patent office in a counterpart application, and that this communication was not received by any individual designated in 1.56(c) more than 30 days prior to the filing of the IDS.

3. Applicants submitted a Supplemental Information Disclosure Statement (IDS) on April 23, 2004 by express mail that cited a single reference, Lo et al., on a Form 1449. The Patent Office indicated receipt of the IDS on April 23, 2004. The IDS explicitly asserts that the Form 1449 contains references that "were recently cited in an International Search Report mailed March 24, 2004." Applicants also enclosed a copy of the foreign patent office communication (i.e., an International Preliminary Examination Report). The communication states that it relates to Applicant file reference "P1793R1" (see top of page 1), which matches the attorney docket number listed on the filing receipt in the present application that was mailed on January 28, 2002. The single reference cited on the Form 1449 (Lo et al.) at issue was listed as newly cited in this foreign communication (see page 3 of the IPER under the heading "NEW CITATIONS"). Therefore, the Applicants submit that the Supplemental IDS was clearly filed within 30 days of receipt of a communication from a foreign patent office by any individual within the scope of 1.56(c), and clearly contained only references that had been newly cited in a counterpart foreign application. See Exhibit A.

4. For the foregoing reasons, Applicants respectfully submit that the IDS filed on April 23, 2004, falls within the scope of the exemption provided by 37 C.F.R. § 1.704(d), and therefore is not an "other paper" under 37 C.F.R. § 1.704c(8). Nevertheless, the Patent Term Adjustment History displayed on the PAIR system for this application indicates that Applicants incurred a delay of 64 days resulting from the filing of this IDS. Applicants respectfully submit that this result is erroneous, such that the PTA for this application should be increased by 64 days, for a total of 221 days.

5. Applicants acknowledge that the present Petition relates to events that occurred prior to payment of the issue fee. Applicants submit, however, that prior to payment of the issue fee, they were not entitled to an adjustment of the PTA since, even disregarding the 64 day delay, Applicants' total delay of 158 days (33 + 67 + 58 days as shown on PAIR) exceeded the total delays caused by the Patent Office. Subsequent to payment of the issue fee, however, the Patent Office incurred an additional delay under 37 CFR 1.702(a)(4) and 702(b) resulting in an overall delay of 379 days as indicated by PAIR, which exceeds Applicants' total delay by an amount

more than the 64 days at issue in this Petition. Applicants submit, therefore, that the delays incurred by the Patent Office after payment of the issue fee now entitle Applicants to an adjustment of 64 days that was unavailable when the issue fee was paid. Consequently, the present after-issuance Petition is timely, since it relates to issues that could not have been raised under 37 CFR 1.705(b). See 37 CFR 1.705(d).

6. Applicants submit that the present application is not subject to a terminal disclaimer.

7. It is Applicants' belief that there were no additional circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 C.F.R. § 1.704, beyond the circumstances already indicated on the PAIR Patent Term Adjustment History and reflected in the 157 days of PTA currently granted to the present application.

8. For the foregoing reasons, Applicants respectfully request that the term of the U.S. Patent 6,979,556 be extended by an additional 64 days, resulting in a total PTA of 221 days, and that a Certificate of Correction be issued to that effect.

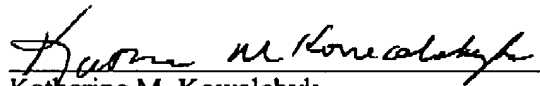
9. If there are any outstanding issues or a need for any clarification on this matter, the Patent Office is invited to telephone the undersigned attorney.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903

Date:

January 26, 2006

  
Katherine M. Kowalchyk  
Reg. No. 36,848  
KMK:GJG

**23552**

PATENT TRADEMARK OFFICE

**EXHIBIT A**  
**U.S. SERIAL NO. 10/020,786**  
**IDS DOCUMENTS SUBMITTED ON APRIL 23, 2004**

Receipt is hereby acknowledged for the following in the U.S. Patent and Trademark Office:  
In re Application of: SIMMONS ET AL.  
For: PROKARYOTICALLY PRODUCED ANTIBODIES & USES THEREOF  
Docket No.: 11669.183USU1  
Filed: DECEMBER 13, 2001  
Express Mail No.: EV 372668234 US  
Date Mailed: April 23, 2004  
Serial No.: 10/020,786  
Due Date:

- ☒ Transmittal Sheet in duplicate containing Certificate of Mailing
- ☒ Supplemental Information Disclosure Statement, Form 1449, 1 Reference, Copy of International Search Report
- ☒ Check in the amount of \$180.00 for information disclosure statement fee
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Patent

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: SIMMONS ET AL. Examiner: G. LEFFERS  
Serial No.: 10/020,786 Group Art Unit: 1636  
Filed: DECEMBER 13, 2001 Docket: 11669.183USU1  
Confirmation No.: 9525 Customer No.: 23552  
Title: PROKARYOTICALLY PRODUCED ANTIBODIES & USES THEREOF

**CERTIFICATE UNDER 37 CFR 1.10:**

"Express Mail" mailing label number: EV 372668234 US  
Date of Deposit: April 23, 2004

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By: *Sheryl A. Boerboom*  
Name: Sheryl A. Boerboom

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**23552**

PATENT TRADEMARK OFFICE

Sir:

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**EV372668234US**

- ☒ Transmittal Sheet in duplicate containing Certificate of Mailing
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612.332.5300

By: *Katherine M. Kowalchuk*  
Name: Katherine M. Kowalchuk  
Reg. No.: 36,848  
KKowalchuk:sab

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